IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mahesh Kumar & Ors. v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1898/1990
under Article 226 of the Constitution of India.

Date of Order : 13th February, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Pankaj Bohra for Mr. Ravi Bhansali, for the respondents.

BY THE COURT :

This writ petition, questioning the validity of land acquisition proceedings initiated under a notification dated 30.8.1989 issued by appropriate government under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”) culminating into a notification dated 10.4.1990 under section 17(4) of the Act of 1894, is preferred by the petitioners.

In brief facts of the case are that Government of Rajasthan by notification dated 30.8.1989 issued under Section 4(1) of the Act of 1894 notified that agricultural land in village Ramdeoji-

ka-chanderia is needed for construction of 220 KV Sub Grid Station. The notification was affixed at the notice board at Collectorate, Chittorgarh, Tehsil, Panchayat Samiti and Gram Panchayat concerned and also at the conspicuous place at village Ramdeoji-ka-chanderia. The notification dated 30.8.1989 was also published in two daily newspapers viz. Jai Mewar and Jannayak in their editions dated 3.11.1989 and 4.11.1989.

The Land Acquisition Officer by notice dated 20.9.1989 (Anx.R/2, R/3 and R/4) called upon one Shri Mohanlal Mahajan to submit objections with regard to the land sought to be acquired under the notification dated 30.8.1989. Shri Mohanlal in pursuant to the notices dated 2.11.1989 submitted objections to the Land Acquisition Officer stating therein that the land situated in Arazi Nos.269, 270, 272 and 275 is not under his khatedari but is in the name of Shailesh Kumar, Dinesh Kumar, Sushila Devi, Mahesh Kumar and Sohan Devi (present petitioners). Shri Mohanlal also apprised the Land Acquisition Officer that parts of khasra Nos.269, 270, 272 and 275 have already been converted into urban land on the applications preferred by the persons named above. The Land Acquisition Officer after receiving the objections submitted his report to the Government on 30.1.1990 making a recommendation for issuing a declaration under Section 6 and to acquire the land in accordance

with the provisions of Section 17(4) of the Act of 1894 . It is also pertinent to note that the Collector, Chittorgarh by a letter dated 2.4.1990 communicated to the State Government that the land proposed for acquisition is kept reserved for residential purpose in the master plan and some part of the land has already been converted as urban land. The Collector also pointed out that the Land Acquisition Officer under the report dated 30.1.1990 only made a reference of the objections but has not decided the same and made a recommendation for adopting the procedure under Section 17(4) of the Act of 1894 for acquiring the land. The State Government then issued the notification impugned dated 10.4.1990 exercising powers under Sections 6 and 17(4) of the Act of 1894. In the notification dated 10.4.1990 Shri Mohanlal is shown as a khatedar of the land bearing Arazi Nos.269, 270, 272 and 275.

With the factual background above, while giving challenge to the notification dated 10.4.1990, it is contended by counsel for the petitioner that though a notification under Section 17(4) of the Act of 1894 is issued by the appropriate government but prior to that objections under Section 5-A of the Act of 1894 were not only invited and entertained but the Land Acquisition Officer also submitted his report, therefore, the appropriate government was knowing it well that Mohanlal was not khatedar of the land

proposed to be acquired. The appropriate government was also aware of the fact that present petitioners are the persons interested, therefore, only to deprive them from their valuable right to submit objections with regard to acquisition proposed the extraordinary course as prescribed under Section 17(4) of the Act of 1894 was adopted. Counsel for the petitioners also pointed out the communication dated 4.6.1990 by the Land Acquisition Officer, Chittorgarh to the Executive Engineer, Rajasthan State Electricity Board, Bhilwara, copy of which was also endorsed to the appropriate government whereby a request was made for making requisite amendment in the notification dated 10.4.1990 in view of the facts averred in the report dated 30.1.1990.

The another contention of counsel for the petitioners is that there was no reason available to the appropriate government to ignore the usual procedure for land acquisition and to adopt the extraordinary procedure prescribed under Section 17(4) of the Act of 1894. To substantiate the contention, counsel for the petitioners has stated that in the report dated 30.1.1990 the Land Acquisition Officer while referring the objections raised by Shri Mohanlal without deciding the same for no just and valid reason made a recommendation for adopting the course provided under Section 17(4) of the Act of 1894. It is also asserted by counsel for the petitioners that no reason

is given by the respondents even in their reply to the writ petition for adopting the procedure prescribed under Section 17(4) of the Act of 1894.

A reply to the writ petition is filed on behalf of the State Government as well as on behalf of the Rajasthan State Electricity Board emphasising that there was no error in the notification dated 30.8.1989 as on that day Shri Mohanlal was khatedar of the land and the petitioners were subsequently entered as khatedars in revenue records. It is also stated by the respondents that sufficient opportunity was given to Shir Mohanlal to tender objections and he also availed the same. According to the respondents the petitioners are family members of Shri Mohanlal and, therefore, they were aware about initiation of the land acquisition proceedings but intentionally they avoided the proceedings initiated under the Act of 1894 and also not submitted their objections.

A rejoinder to the reply filed on behalf of the respondents is filed on behalf of the petitioners stating therein that notification under Section 4(1) of the Act of 1894 was published in two newspapers on 3.11.1989 and 4.11.1989 but their names were entered in revenue records on 26.10.1989, as such when the notification under Section 4(1) of the Act of 1894 acquired finality, they were the khatedars of the land proposed to be acquired.

Heard counsel for the parties.

The contention of counsel for the petitioners is that the appropriate government without having a genuine urgency issued a notification dated 10.4.1990 under Section 17(4) of the Act of 1894. According to counsel for the petitioners the extraordinary mode for acquiring the land in question in the instant matter is adopted by the government only with a view to deprive the petitioners' from raising their objection in accordance with the provisions of Section 5-A of the Act of 1894 and with a view to over come the illegality pointed out by the Collector, Chittorgarh by letter dated 2.4.1990 to the effect that the land in question was under the khatedari of the petitioners, the land already stood converted as urban land and that the land acquisition proceedings were initiated without having any report from the office of the Collector Chittorgarh.

Per contra, learned Deputy Government Advocate urged that examination of urgency for adopting the course under Section 17 of the Act of 1894 is a subjective satisfaction of the government and this Court while exercising powers under Article 226 of the Constitution of India is not required to examine the same. It is also contended by learned Deputy Government Advocate that the State Government

after considering all circumstances reached at a specific conclusion that the land was required to be acquired urgently and, therefore, by notification dated 10.4.1990 the powers under Section 17(4) of the Act of 1894 were rightly exercised.

Hon'ble Supreme Court in the case of Raja Anand Brahma Shah v. State of U.P., reported in AIR 1967 SC 1081, while examining the circumstances in which powers under Section 17(4) of the Act of 1894 could be adopted, held as under:-

> "8.It is true that the opinion of the State Government which is a condition for the exercise of the power u/S.17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government under S.17(4). The legal position has been explained by the Judicial Committee in King Emperor v. Sibnath Banerjee, 72 Ind App 241 : (AIR 1945 PC 156), and by this Court in a recent case Jaichand Lal Sethia v. State of West Bengal, Cr.Appeal No.110 of 1966, D/-27-7-1966 : (reported in AIR 1967 SC 488) : 1967 Cri.L.J. 520. But even though the power of the State Government has been formulated u/S.17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is malafide."

In the case of Narayan v. State of Maharashtra, reported in AIR 1977 SC 183, Hon'ble Supreme Court considered the scope of challenge to the formation of opinion by appropriate government while adopting the urgency provisions for acquiring land under the Act of 1894. In the aforesaid case Hon'ble Supreme Court observed as follows:-

> "10.It is true that, in such cases, the formation of an opinion is a subjective-matter as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than Courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant materials in order to pass the test which Courts do impose. That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the Courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts,

> or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a Court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider."

A Division Bench of Allahabad High Court in the case of Ram Narain Rai & Ors. v. State of Uttar Pradesh & Ors. reported in AIR 1991 Allahabad 330, while relying upon the judgments referred above held that the question of urgency is a matter of subjective satisfaction of the appropriate government and it is not open for the courts to examine the propriety or correctness of the satisfaction arrived on an objective consideration of facts. An opinion of the appropriate government can only be challenged in a court of law if it can be shown that the government never applied its mind to the matter or that the action of the government is malafide.

The same question also came up before Division Bench of Delhi High Court in the case of Uday Kaushisk v. The Land Acquisition Collector & Ors, reported in 1988 Delhi 101, wherein Delhi High Court held as under:-

> "7.We agree with the learned counsel that it is for the Appropriate Government, in the

> present case the Lt. Governor, to apply his mind to the facts of the case and satisfy himself that there is an urgency in the land acquisition and that the urgency is so great that the normal procedure of calling upon aggrieved persons to file objections should be dispensed with and that the declaration and further proceedings should take place with great expedition. We also agree with him that though it is not open to the Court to consider the adequacy or otherwise of the material on the basis of which the Lt. Governor reaches his satisfaction it is open to the Courts to examine whether there was material at all before the Lt. Governor to reach such satisfaction, whether the Lt. Governor applied his mind to a considerable material and whether the conclusion or satisfaction was based on relevant considerations."

In the case of Haripada Mandal and others v. State of Bihar and others, reported in AIR 1989 Patna 83, Patna High Court while examining scope of provisions of Section 17(4) of the Act of 1894 held as under:-

> "14.There is one other ground on which the entire acquisition proceeding has to be quashed. As stated earlier, the notification under S.4(1) of the Act was published on 16-1-1978 together with a direction under S.17 (4). It is now well settled that the valuable right given to the land owners to object against the acquisition under S.5A of the Act, can be taken away only in genuine

> case of urgency. The power to issue direction under S.17(4) of the Act, must be exercised with caution and in genuine cases or urgency when it is not practicable to invite and consider objections under S.5A of the Act. It is also well settled that if it is established that there was really no urgency and that making of a declaration under S.17(4) of the Act was merely a colourable exercise of power for ulterior reasons, then same has to be struck down. It is not necessary for me to refer to the large number of decided cases on this point. But in fairness to the counsel appearing on behalf of the petitioners, I must refer to the judgment of the Punjab and Haryana Court in the case of Radhe Sham v. State of Haryana, AIR 1982 Punj and Har 519 (FB) cited by him. It was held in that case that inordinate delay in completion of the proceedings under the Act may at times vitiate the proceedings as they become tainted with colourable exercise of power. Such delay may indicate that initiation of the original proceedings, far from being directed to an immediate or foreseeable public purpose and its execution was but a device to misuse the provisions of S.4 of the Act and peg down the prices of lands."

The object of the provisions of Section 17 of the Act of 1894 is that when there is urgency for execution of a public purpose, this may be done expeditiously by taking possession of the land without having to wait for making of award. The application of Section 17(4) of the Act of 1894 deprives a land

holder from the opportunity of filing objections to the acquisition of their land as enshrined under Section 5-A. The effect of such a direction is having serious consequence upon the person interested in the land. The powers, therefore, are always required to be exercised cautiously and in the cases of genuine urgency. It is true that a decision on the question of invoking urgency is only that of the government and ordinarily it is not justiciable, however, the decision must be taken on proper material and in a objective manner. The power is not required to be exercised mechanically. By invoking urgency powers the normal process for land acquisition stands dispensed with, therefore, a land owner looses his right to submit objections as prescribed under Section 5-A of the Act which enable the owner of the land to make his objections and there has to be objective consideration of the said objections before a decision is taken and declaration under Section 6 of the Act of 1894 is made. A valuable right given to the land owners to object against acquisition under Section 5-A of the Act can be taken away only in genuine case of urgency. The power to issue direction under Section 17(4) of the Act of 1894, therefore, is always required to be exercised when it is felt that nature of urgency is such that it is not practicable to invite and consider objections under Section 5-A of the act, otherwise that will frustrate the purpose for which the land is proposed to be acquired. If it is established that the

appropriate government adopted the course of urgency provisions though there was no real urgency, in that event this Court while exercising powers under Article 226 of the Constitution of India can very well interfere with such a decision of the government being taken under colourable exercise of powers.

In view of the discussion made above, the main issue required to be examined in present writ petition is as to whether the appropriate government was right in present set of facts in adopting the extraordinary course for acquiring the land as prescribed under Section 17(4) of the Act of 1894.

In the matter in hand the counsel for the petitioners has given challenge to adoption of powers under Section 17(4) of the Act of 1894 on various grounds including that there was no genuine urgency, the appropriate government was having no material available to reach at the conclusion that the land was required to be acquired urgently and the government simply acted upon the recommendation made by the Land Acquisition Officer under his report dated 30.4.1990 wherein such a recommendation is made without any reason. According to counsel for the petitioners the government has exercised powers under urgency clause in most mechanical and casual manner. It is relevant to note that the petitioner in petition for writ while giving challenge as stated above averred as under:-

"(c)That in the instant case from the letter of the Land Acquisition Officer it is clear that a regular enquiry was conducted as envisaged in section 5-A of the Act of 1894 and objections were invited and they were considered and he has sent the report. In this regard it is submitted that right to dispense with the enquiry as envisaged under section 17(4) of the Act of 1894 is as soon as the notification under section 4 is issued. Once the proceedings are allowed to continue and are concluded in terms of Section 5-A of the Act of 1894 then it is no more open for the Government to say that we hereby invoke the provisions of section 17 (4) of the Act of 1894 and we dispense with the enquiry. Dispensation of the enquiry as envisaged in section 5-A only arises when the enquiry is not commenced. In the instant case since the enquiry commenced and concluded, therefore, there is no question of dispensing with the enquiry of section 5-A of the Act of 1894. In this way the final notification dated 10.4.1990 which proceeds to acquire the land U/s.17(4) of the Act of 1894 is un-tenable and the same deserves to be quashed and set aside.

(d)That the land in question is sought to be acquired while treating it to be an agriculture land. Whereas from the letter dated 30.1.1990 it is clear that the Government was informed of the fact that the land in question is no more an agriculture land and it has become an urban land. Thus despite of a fact being on record that the land in question has become an urban land,

the Government has not taken care to even apply its mind. Thus in the instant case from the record it is clear that despite of the fact that the land in question had become urban land, the State Government has issued the final notification U/s.17(4) of the Act of 1894 while treating it to be an agriculture land. Thus it is a case of non-application of mind at the level of the Government.

(m)That the provisions of Section 17(4) of the Act of 1894 are to be invoked in a situation where it has become imminent to acquire the land urgently. In the instant case there appears to be no such urgency so as to permit the State Government to invoke the extraordinary provisions as contained in Section 17(4) of the Act of 1894. In this regard it is also submitted that section 17 (4) only authorises the State Government to dispense with the enquiry as envisaged U/s.5-A of the Act of 1894. About 3 months ago the Government had received the report under section 5-A of the Act of 1894. Therefore, this much of time was very much available to them and according to petitioners there was no justification whatsoever for invoking the provisions of section 17(4) of the Act of 1894 and this invocation suffers from the vice of malafides or appears to have been exercised in a colourable manner and the same has been exercised for achieving an object other then lawful objects."

In reply to the contentions above, the appropriate government in its written averred as under:

> "(c)That the contents of sub-para(c) of the grounds are not admitted in the manner they have been stated. In fact u/s 17 of the Land Acquisition Act, the State Government has special power in urgent cases to take steps and the present matter is of urgent nature hence the provision of Sec.17(4) of the Land Acquisition Act are rightly invoked.
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> (d)That the contents of sub-para(D) of the grounds are not admitted in the manner they have been stated. At the time of issuing of notification u/s 4(1) the land acquired was of agricultural land and later conversion and issuance of pattas were done after 30.8.89. As such it cannot be acquired as a urban land. The petitioners got it converted by suppressing the material fact of land acquisition from the Government agencies.
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> (m)That the contents of para No.(m) of the grounds are not admitted in the manner they have been stated. The provisions of Section 17(4) of Land Acquisition Act were rightly invoked looking to the urgency of matter. It is further submitted that neither there is any malafide nor colourable exercise of the powers."

In reply to the writ petition no material is placed on record by appropriate government on basis of which the provisions for urgent acquisition of land were invoked. The denial of averments made by the petitioner in the petition for writ is also quite cursory.

Be that as it may, from facts admitted by the parties, it is clear that the respondents invited the objections as required under Section 5-A of the Act of 1894 and the note of the same was taken by the Land Acquisition Officer and a report dated 30.1.1990 was then submitted i.e. available on record. The Land Acquisition Officer while submitting the report under Section 5-A of the Act of 1894 averred the objections submitted by Shri Mohanlal, however, he has not decided the same. The Land Acquisition Officer while submitting report under Section 5-A of the Act of 1894 without assigning a single reason made a recommendation to the appropriate government to adopt the course prescribed under Section 17(4) of the Act of 1894. The appropriate government also accepted the recommendation made by the Land Acquisition Officer and issued the notification dated 10.4.1990. Prior to issuance of notification under Section 17(4) of the Act of 1894 the Collector, Chittorgarh by his communication dated 10.4.1990 made it clear to the appropriate government that the land proposed to be acquired is reserved for developing a residential colony and some part of that land has already been converted as urban land. The appropriate government was also aware of the fact that Shri Mohanlal was not khatedar of the land proposed to be acquired. Irrespective of it, the appropriate government proceeded with the matter and chose to issue

notification dated 10.4.1990. It is pertinent to note that in entire reply to the writ petition nothing is said by the State Government about urgency which compelled for adopting the procedure provided under Section 17(4) of the Act of 1894. It is also relevant to note that this Court by order dated 26.4.1990 while issuing notice to show cause to the respondents passed an interim order restraining the respondents from dispossessing the petitioners from the land in question. The interim order was subsequently confirmed and, therefore, the same is still in operation, no effort appears to have been made by the respondents to get the petition decided at earliest though it is pending for hearing since 1990.

From narration of the facts stated above it is apparent that there was no actual urgency to adopt the procedure prescribed under Section 17(4) of the Act of 1894 and to avoid the regular procedure for land acquisition. A valuable right is available to a person interested with the land proposed to be acquired to submit the objections and for their hearing under Section 5-A of the Act of 1894 and that in normal course should not be taken away by the appropriate government. Such a valuable right can be ignored only in exceptional circumstances. No reason for such an urgency is given by the respondents in reply. The appropriate government in the present matter adopted the procedure prescribed under Section

17(4) of the Act of 1894 in most casual manner which is not at all permissible as it deprives a person interested from the right of hearing. The facts of the case establish it well that there was no genuine urgency for acquiring the land in question.

In view of whatever discussed above, this writ petition deserves acceptance and, therefore, the same is allowed. The notification impugned dated 10.4.1990 passed by the appropriate government under Section 17(4) of the Act of 1894 is quashed to the extent it relates to the land that is subject matter of this petition for writ.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.